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9 Attorneys for Claimant
10 PUBLIC UTILITY DISTRICT NO. 2 OF
GRANT COUNTY, WASHINGTON

11 UNITED STATES BANKRUPTCY COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 In re:
16 PACIFIC GAS AND ELECTRIC
17 COMPANY, a California corporation,
18 Debtor.
19 Federal I.D. No. 9400742640
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22
23

Chapter 11 Case
Bankr. Case No. 01-30923 DM
**PUBLIC UTILITY DISTRICT
NO. 2 OF GRANT COUNTY
WASHINGTON'S MOTION
FOR (I) WITHDRAWAL OF
REFERENCE OF PROOF OF
CLAIM AND (II) TRANSFER
OF VENUE THEREOF TO THE
UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF WASHINGTON**

1 Plaintiff Public Utility District No. 2 of Grant County Washington ("Grant"),
2 through its undersigned counsel, hereby moves the United States District Court for
3 the District of Northern California (the "California District Court") for an order
4 (i) withdrawing the reference to liquidate proof of claim number 7864 filed by
5 Grant (the "Grant Claim") against Pacific Gas and Electric Company, the above-
6 captioned debtor (the "Debtor"), from the United States Bankruptcy Court for the
7 Northern District of California (the "California Bankruptcy Court") to the
8 California District Court and (ii) transferring venue for the liquidation of the Grant
9 Claim from the California District Court to the United States District Court for the
10 Eastern District of Washington (the "Washington District Court"). As grounds for
11 this Motion, Grant states as follows:

12 1. On April 6, 2001, the Debtor filed for voluntary relief under chapter 11
13 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy
14 Code"), in the California Bankruptcy Court. On or about August 31, 2001, Grant
15 filed the Grant Claim in the Debtors' chapter 11 case in the amount of
16 approximately \$18 million, plus interest and costs, for electricity sold to the
17 California Independent System Operator Corporation (the "ISO") on behalf of the
18 Debtor and certain other utilities. On April 1, 2004, the California Bankruptcy
19 Court entered an order extending the time for the Debtor to object to the Grant
20 Claim until 90 days after the date on which the Grant Claim becomes an allowed
21 claim pursuant to the Debtor's plan of reorganization (the "Plan of
22 Reorganization"). The Plan of Reorganization provides that the allowed amount of
23 the Grant Claim would be determined by the Federal Energy Regulatory
24 Commission ("FERC") in certain refund proceedings at FERC (the "FERC Refund
25 Proceedings").

26 2. Grant had challenged FERC's jurisdiction over the transactions that
27 formed the basis of the Grant Claim. On November 23, 2004, FERC ruled that the
28 electricity sales at issue in the Grant Claim were subject to FERC jurisdiction and

1 are subject to price mitigation. *San Diego Gas & Elec. Co.*, 109 FERC ¶ 61,218
 2 (Nov. 23, 2004) at ¶¶ 55-69; *see also* ¶¶ 70-72 (statements regarding the ISO's
 3 payment obligations with respect to such transactions). Grant appealed the
 4 November 23, 2004 FERC Order to the Ninth Circuit, where it remains pending.

5 3. Although the Ninth Circuit has not yet decided Grant's appeal
 6 regarding the FERC's November 23, 2003 Order, in a related appeal from the
 7 FERC Refund Proceedings, the Ninth Circuit recently concluded that governmental
 8 entities—such as Grant—are *not* in fact subject to the price mitigation authority of
 9 FERC. *See Bonneville Power Admin. v. Fed. Energy Regulatory Comm'n*,
 10 422 F.3d 908 (9th Cir. 2005), *petition for reh'g and reh'g en banc denied* in
 11 *Bonneville Power Admin. v. Fed. Energy Regulatory Comm'n*, No. 02-70262, *et al.*,
 12 Order Re: Petition for Reh'g and Reh'g En Banc (Mar. 7, 2007). In light of this
 13 decision, the ultimate question of whether the electricity sales at issue in the Grant
 14 Claim may be subject to FERC's price mitigation authority has been resolved, and
 15 it is time for the Grant Claim to be resolved.

16 4. The most appropriate place for the Grant Claim to be liquidated is the
 17 Washington District Court, where Grant initiated a civil action more than three
 18 years ago against the ISO relating to the electricity sales at issue.¹ Grant recently
 19 amended its complaint in the Washington District Court to include the other utilities
 20 on whose behalf the electricity was sold to the ISO but was precluded from
 21 including the Debtor because of the discharge injunction set forth in the Plan of
 22 Reorganization. Grant seeks the relief sought in this Motion so that all the issues
 23 and parties relating to the electricity sales underlying the Grant Claim may be
 24 addressed in a single forum—the Washington District Court—by consolidating the
 25 Grant Claim with the action pending there.

26
 27 ¹ Grant is seeking to withdraw the reference and transfer venue solely to
 28 liquidate the allowed amount of the Grant Claim. The ultimate satisfaction of the
 allowed Grant Claim would remain subject to the terms and conditions of the Plan
 of Reorganization as confirmed by the California Bankruptcy Court.

1 WHEREFORE, Grant respectfully requests that the California District Court
2 enter an order withdrawing the reference for the liquidation of the Grant Claim
3 from the California Bankruptcy Court to the California District Court and
4 transferring venue for the liquidation of the Grant Claim to the Washington District
5 Court.

6 Grant County's Motion is based upon this Motion, the Memorandum of
7 Points and Authorities filed concurrently herewith, and upon all other papers on file
8 herein.

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10 Dated: June 7, 2007

Respectfully submitted,

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12 By: /s/ Peter G. McAllen
13 Peter G. McAllen, CA SB#107416

14 Attorneys for Claimant
15 PUBLIC UTILITY DISTRICT NO. 2 OF
16 GRANT COUNTY WASHINGTON
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